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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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LINA YANNI,

Plaintiff,

ANSWER

- against -

FILED ELECTRONICALLY

THE UNITED STATES DEPARTMENT OF
THE TREASURY INTERNAL REVENUE
SERVICE,

07 Civ. 11097 (SCR) (LMS)

Defendant.

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Defendant the Internal Revenue Service (the “IRS” or the “Government”) by its attorney Michael J. Garcia, United States Attorney for the Southern District of New York, answers the Complaint on information and belief as follows:

1. Neither admits nor denies the allegations in paragraph 1 of the complaint because they constitute plaintiff’s characterization of this action. To the extent a response is required, the Government denies the allegations contained in this paragraph.
2. Neither admits nor denies the allegations in paragraph 2 of the complaint because they constitute an assertion of jurisdiction, to which no response is

required. To the extent a response is required, the Government denies the allegations contained in this paragraph.

3. Neither admits nor denies the allegations in paragraph 3 of the complaint because they constitute an assertion of venue, to which no response is required. To the extent a response is required, the Government denies the allegations contained in this paragraph.
4. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 4 of the complaint.
5. Denies the allegations in paragraph 5 of the complaint, except admits that the Department of the Treasury is an executive agency of the United States of America, of which the IRS is a part.
6. Denies the allegations in paragraph 6 of the complaint, except admits that plaintiff's 2003 Form 709 contained a refund request in the amount of \$128,764.00. The Government respectfully refers the Court to Exhibit A to the complaint.
7. Admits the allegations in paragraph 7 of the complaint.
8. Admits the allegations in paragraph 8 of the complaint.
9. Denies the allegations in paragraph 9 of the complaint, except admits that on or about December 18, 2006, an IRS Appeals Officer notified plaintiff's counsel that there was "no basis to allow any part of" the refund claim.
10. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 10 of the complaint, but respectfully refers the

Court to the documents attached as Exhibit A to the complaint for a true and accurate statement of their contents.

11. Denies the allegations in paragraph 11 of the complaint.
12. Neither admits nor denies the allegations in paragraph 12 of the complaint because they constitute conclusions of law, to which no response is required. To the extent a response is required, the Government denies the allegations contained in this paragraph and respectfully refers the Court to 26 U.S.C. § 2505.
13. Neither admits nor denies the allegations in paragraph 13 of the complaint because they constitute conclusions of law, to which no response is required. To the extent a response is required, the Government denies the allegations contained in this paragraph.
14. The last unnumbered paragraph in the complaint, including sub-paragraphs (1)-(4), contains plaintiff's prayer for relief, to which no response is required.

FIRST DEFENSE

15. The complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

16. This Court lacks subject matter jurisdiction over all or part of the complaint.

THIRD DEFENSE

17. Plaintiff's refund claim is untimely, because it was not submitted within three years of the filing of return or within two years of the payment of the tax. *See* 26 U.S.C. § 2511.

Dated: New York, New York
May 16, 2008

MICHAEL J. GARCIA
United States Attorney
Attorney for the Government

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